



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

April 17, 2023

BY ECF

Hon. Katharine H. Parker
United States District Court
Southern District of New York
500 Pearl Street, Room 750
New York, New York 10007

Re: *Virtu Financial, Inc. v. U.S. Securities and Exchange Commission,*
1:22-cv-10088-JHR (S.D.N.Y.)

Dear Judge Parker:

Consistent with the Court’s direction in its Initial Case Management Conference Order, ECF No. 18, counsel for Plaintiff Virtu Financial, Inc. (“Virtu”) and Defendant U.S. Securities and Exchange Commission (“SEC”) respectfully submit this joint letter in this action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

This case concerns a FOIA request submitted by Virtu to the SEC in June 2022, seeking documents and information regarding, among other things, the SEC’s communications with certain third parties concerning retail stock order handling and execution. Virtu filed the complaint in this action on November 29, 2022, ECF No. 1, and the SEC filed an answer on January 9, 2022, ECF No. 13.

The parties have discussed the Court’s Initial Case Management Conference Order and do not believe the Court’s standing Civil Case Management Plan is appropriate for this matter, as FOIA actions are generally resolved through summary judgment without discovery. See, e.g., *Wood v. Fed. Bureau of Investigation*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. Dep’t of Justice*, 19 F.3d 807, 812–13 (2d Cir. 1994). Accordingly, the parties respectfully request to be excused from the requirements to confer under Rule 26(f), serve Rule 26(a)(1) initial disclosures, and submit a Proposed Case Management Plan.¹ Counsel for the parties have discussed next steps in this FOIA action, and propose the following:

¹ The parties have conferred and report that they do not consent to conducting all proceedings in this case before a magistrate judge pursuant to 28 U.S.C. § 636(c).

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Given the volume of documents at issue, Virtu agreed to narrow its initial FOIA request and proceed with the production of responsive emails outside the SEC's "Complex Track." *See* 17 C.F.R. § 200.80(d)(4). The SEC has committed to processing 500 pages of documents per month on a rolling basis and producing non-exempt, responsive documents. Pursuant to this commitment, the SEC has made two releases, one on March 16, 2023, and the second on April 10, 2023. The SEC anticipates that at its current pace, it will complete production of emails responsive to the modified FOIA request in October 2023. Accordingly, the parties propose the following schedule up through and including summary judgment:

Event	Deadline
Completion of release of non-exempt records responsive to the modified FOIA request	10/09/2023
Parties to confer about FOIA response and discuss possibility of settlement	10/30/2023
Summary judgment and other dispositive motions	01/08/2024
Oppositions to summary judgment and other dispositive motions	01/22/2024
Replies to summary judgment and other dispositive motions	01/29/2024

If the Court is amenable to this proposal, the parties believe that the Initial Case Management Conference scheduled for May 8, 2023, at 11:15 a.m., may not be necessary, or may be more productive if rescheduled as a status conference at a later date. Counsel for the parties are, of course, happy to appear on May 8, 2023 as scheduled if the Court believes a conference would be useful.

We thank the Court for its consideration of this letter.

Respectfully submitted,

/s/ Michael S. Bailey

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